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RESOLUTION
OF THE 4TH STANDING COMMITTEE

(European Union Policies)

(*Rapporteur* TERZI DI SANT'AGATA)

adopted at the sitting of 1 February 2023

ABOUT

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A COMMON FRAMEWORK FOR MEDIA SERVICES IN THE INTERNAL MARKET (EUROPEAN MEDIA FREEDOM ACT) AND AMENDING DIRECTIVE 2010/13/EU (COM(2022) 457)

*pursuant to Rule 144(*1a*) and (6) of the Rules of Procedure*

Communicated to the Presidency on 3 February 2023

SENATE PRINTING HOUSE

The Commission,

examined the proposal for a regulation COM(2022) 457 establishing a common framework for media services in the internal market (*European Media* Freedom Act - EMFA) and amending Directive 2010/13/EU (Audiovisual Media Services Directive);

whereas it contains a common framework to ensure the smooth operation and development of the media services market, which is increasingly cross-border in nature, while harmonising the basic regulatory framework to protect pluralism and media freedom, and strengthening cooperation between national authorities, not least by setting up the European Media Services Committee

considering the contributions made during the hearings held on 10 January 2023 and 17 January 2023;

whereas the proposal has been examined by several chambers of the national parliaments of the European Union, and four of these - the German *Bundesrat*, the French Senate, the Danish Parliament and the Hungarian National Assembly - have delivered reasoned opinions on compliance with the principles of subsidiarity and proportionality, having regard to the Government's report, submitted pursuant to Article 6 of Law No. 234 of 24 December 2012, and heard the representative of the Government at the sitting of 31 January 2023,

considers that it can take a favourable view of compliance with the principles of subsidiarity and proportionality, subject to the following observations.

The proposal is broadly supported in that it establishes uniform legal constraints in all Member States to ensure the proper functioning and development of the market for media services and digital content, and at the same time a minimum level of safeguards for media pluralism and independence.

The legal instrument of a regulation is appropriate, as it allows for uniform application and immediate effectiveness in all Member States, while allowing national legislators discretion in the implementation of some of the rules of principle laid down therein, in the same way as the instrument of a directive.

However, it is emphasised that the recipients of the harmonising impulse of the proposal are not so much the more advanced national legal systems, such as the Italian one, which indeed seems to have inspired some of its provisions in certain respects.

The approach of the proposal and the use of the regulation, consistent with the principle of subsidiarity, must also not prejudice the competence of Member States to provide for the financing of public service media for the fulfilment of the service mission

public broadcasting conferred, defined and organised by each member state in accordance with Protocol No. 29 on the system of public broadcasting in the member states.

The legal basis identified in Article 114 of the Treaty on the Functioning of the European Union (TFEU) is appropriate in view of the peculiar nature of the internal media market, which necessarily involves the Union's value framework as defined in Article 2 TFEU.

In this perspective, the principle of pluralism of information has had an autonomous and differentiated regulatory development in the different national legal systems and therefore justifies a harmonised regulation at European level to cope with the fragmentation of national legislations and the insuf- ficiency of some of them, especially with regard to the compression of the right to freedom of expression and access to the media and an insufficient or non-independent media supply.

The pursuit of the goal of the internal market thus goes hand in hand with the protection of certain fundamental rights, placing itself in a half-end relationship with respect to them. Moreover, digitalisation and the transactional nature of the media make it inevitable, urgent, and more than ever indispensable to intervene at Union level, also to guarantee the citizens' right to knowledge, recognised by the Parliamentary Assembly of the Council of Europe as a civil and political right to be actively informed on all aspects and all phases of the political, administrative and regulatory decision-making processes and as an indispensable tool to exercise full democratic participation.

With reference to the definitions contained in Article 2 of the proposal, in particular those of 'media service provider' and 'media service', consistency must be ensured with those already contained in existing legislation and in particular in the *Digital Services Act (*DSA) and the *Audio Visual Media Services* Directive (AVMS).

More generally, the possibility of overlaps with some more recently approved and far-reaching measures is noted, such as, among others the *Digital Services Act, which* lays down obligations proportional to the size of *online* platforms and creates new *standards* for combating disinformation and removing illegal content; the *Digital Markets Act (DMA)*, which regulates the role in digital markets of *gatekeepers*, imposing various obligations and prohibitions on these platforms the European Union Code of Conduct against Disinformation, which introduces several measures to combat disinformation, including greater transparency and cooperation with *fact checkers*; the AVMS directive, which imposes certain obligations on platform providers for video condi- tions; the copyright directive, which creates new rules to protect copyright *online*, imposing, among other measures, new obligations on platforms.

A reflection should therefore be made on the definitions conte-
ned in the proposal, in order to make them consistent with those contained in the other regulatory measures mentioned above.

With reference to Article 4, the obligation placed on Member States to respect the editorial freedom of media service providers, including journalists, employees and their families, as well as the secrecy of journalistic sources, also by establishing a ban on the use of *spyware, is* considered useful. The hearings also revealed the need for the introduction, in the aforementioned European regulations to protect pluralism, of rules to counter the so-called '*slapp'* (*strategic lawsuits against public parti- cipation*), i.e. the pretextual use of legal recourse against journalistic activity, as well as a ban on the dismissal of editors without just cause.

With reference to Article 5, on guarantees for the independent functioning of public service media providers, the obligation to ensure that public service media providers provide in an independent and impartial manner a plurality of information and opinions to their audiences, in accordance with their public service remit, must be interpreted as additional and complementary to the obligations already imposed on Member States by national law.

In addition, the provision that Member States must ensure that public service media providers have stable and adequate financing with respect to the obligations arising from public service *status*, in order to enable the achievement of the objectives set while respecting editorial independence, is considered useful. With reference to Article 6, the introduction of a public service obligation is considered useful.

transparency requirement on the ownership of media service providers, which is to be regarded as supplementing and not replacing the relevant national provisions.

With reference to the European Media Services Committee (Articles 8-12), the establishment of such a body is considered useful, as it can ensure effective cooperation between the competent authorities with regard to the increasingly cross-border realities of media services. It is noted, however, that the new body should be granted greater autonomy from the European Commission and more decision-making powers, like the body on the protection of personal data.

With reference to Article 15, the introduction in the proposal of *ad hoc* articles on *prominence,* i.e. the visibility and searchability of general interest content, an aspect just mentioned in Article 15(2) and recital 28, is considered useful.

With reference to Article 17, it should be clarified how large *online* platforms carry out the compatibility assessment with their own terms and conditions of content provided by a qualifying media service provider and which the platform decides to remove. Although Article 17 requires prior information of content providers about the intention to remove content, the nature and means of this assessment should in any case be specified and, even before that, the proportionality of the legitimacy of *online* platforms to carry out such an assessment should be carefully considered.

On the other hand, it is important to avoid a solution, in the context of the negotiation of the proposal, regarding the exemptions of media service providers from the content moderation rules in Article 17, which would prevent possible distorting effects on the entire digital ecosystem, with potential risks in relation to the phenomena of disinformation and information manipulation.

In this context, it is also considered useful to provide large digital platforms with their own complaints procedure for media service providers whose operations have been restricted or suspended by the platforms themselves, thereby providing a necessary additional incentive for dialogue between the parties. On this point, however, the proposal appears to be not entirely comprehensive, insofar as, in paragraph 4, it merely provides for an obligation of good faith negotiation between large digital platforms and media service providers. It would therefore be necessary to strengthen the protection of media service providers against the unjustified removal of content or denial of access by digital platforms, through the recognition of a right of recourse to the courts or the competent national authority.

With reference to Article 19, the statement that
ensures users the right to easily customise the default settings of any device or user interface accessing audiovisual media services. In this context, account should also be taken of the need for traditional media to be able to safeguard their editorial line, e.g. in the context of an aggregated offer of paid audiovisual content, in compliance with existing regulations.

It should also be emphasised, as a provision already contained in the DSA and the DMA, as well as in their combination, that all apparatus, in their *default* configuration, ensure adequate means of access to the programming of audiovisual media services, without prejudice to the possibility for the user to opt for different and specific configurations. Moreover, the concept of "easily modifying" the equipment's settings should be better specified, given the absolute vagueness of the notion of
"facility'. In this regard, the provision of subsequent specific guidelines by the Commission, in consultation with the Committee, might be appropriate. With reference to Article 21, concerning the assessment of media market concentrations, for the first time in the history of the European Union, the meaning of the impact of concentration on media pluralism is precisely defined, including its effects on the formation of public opinion and taking into account the *online* environment.

Consideration should be given to extending the scope of application not only to the 'traditional' media, but also to entities that collect advertising *online* and on the various platforms also in a direct form, including the resources collected by search engines, social and sharing platforms, thus avoiding the introduction of specific rules limited only to the traditional media, which could hinder the necessary consolidation of the sector, without, at the same time, introducing a discipline that would allow the effects on pluralism of the concentrations carried out by network operators to be assessed.

In addition, the reality of local media, which absorb a large part of the broadcasting staff and *audience*, should be better safeguarded against competition from large media service providers.

It is also considered useful that, when assessing mergers involving media companies, the competition from *internet* service providers, including large *online* intermediaries, can also be taken into account with reference to the DMA and DSA.

With reference to Article 23, one agrees with the establishment of the principle that *audience* measurement should be carried out with transparent, proportionate and non-discriminatory criteria, thus ensuring the proper functioning of the advertising market.

With reference to the requirements of Article 23(3), according to which authorities and national regulatory bodies shall encourage the development of codes of conduct drawn up by the *audience* measurement system providers themselves, together with media service providers, it is important that, in the implementation phase, these codes of conduct limit themselves to regulating the *auditing* principles, without covering aspects concerning the commercial policies of the operators concerned, in order to avoid the risk of fostering agreements, even tacit, to the detriment of competition, which may nevertheless be subject to a specific antitrust investigation.

It is also considered appropriate to apply Article 23 of the proposal to non-linear audiovisual media services, audiovisual sharing platforms and other platforms distributing audiovisual media (such as *social networks*). In this perspective, it should be ensured that the *audience of* each type of service is measured by means of objective, transparent and verifiable tools, which are also capable of taking into account the specificities of each one, thus guaranteeing not only the protection of pluralism, but also undistorted competition between operators.

The scope and modalities of the use of *audience* data, in connection with *privacy* legislation, should also be better defined.

Finally, the use of artificial intelligence in news production should be regulated to ensure that the technology is used ethically and transparently, including measures for the identification and removal of disinformation.

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